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| 10/537,904 | 06/14/2006 | Gianni Minganti | MINGANTI | 9222 |
| 1444 7590 07/20/2010 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303 | | | | |
| EXAMINER SCHATZ, CHRISTOPHER T | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,904

Applicant(s)

MINGANTI, GIANNI

Examiner

CHRISTOPHER SCHATZ

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-9 and 11-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-9 and 11-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

FINAL REJECTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 11-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 11 now requires that the vertical support plate support both the heater and a mounting device capable of mounting an annular band from below. The specification as originally filed does not support such an apparatus. While the specification provides support for the support plate supporting a heater, it does not provide support for a support plate that supports a mounting device capable of mounting a band onto a container from below.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-3, 5, 6 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amberg (US 3767496) in view of Marchesini (US 4991377).

As to claims 1 and 5, Amberg discloses a labeling plant capable of labeling a container, said plant comprising a device capable of supporting and transporting a container suspended in an erect position acting above a container, means capable of mounting a heat shrinkable annular band onto a container acting from below (means 71-73; figure 9, discussion of figure 9), means for causing said label to adhere to a container by heat-shrinkage, wherein said means capable of mounting a heat-shrinkable annular band onto said container comprises at least one vertically movable support plate 70 capable of disposing an annular band that is disposed vertically (figures 10, 11, 14-16, discussion of said figures; column 6, line 54 – column 7, line 60). Amberg is silent as to the means for causing the band to adhere by heat shrinkage being supported on said support plate.

Marchesini discloses a device capable of adhering an annular heat shrinkable label to a container, wherein said means 20 (figure 3) capable of causing an annular label to adhere to a container by heat-shrinkage is in the shape of a cylinder, wherein said band and container can be placed with in an opening in said cylinder to receive heat from an ejected fluid (figure 3; column 5, lines 11-25). The cylinder comprises a plurality of nozzles 6a. At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify the apparatus of Amberg such that said adhering means comprises a plurality of fluid dispensing nozzles as taught by Marchesini as such a modification would enable the apparatus to uniformly heat a label

around its entire circumference thus enabling said apparatus to produce a better connection between a label and a bottle in a more efficient manner (column 5, lines 11-30). Furthermore, Marchesini discloses that the label and bottle are raised from below such that said label and bottle are moved within said cylinder (figure 3). One of ordinary skill in the art would thus have readily recognized to place the cylinder on the supporting plate as such a modification would enable the apparatus to immediately heat shrink the annual band onto a container. At the time the invention was made it would have been obvious to one of ordinary skill in the art to further modify Amberg as modified by Marchesini such that the means for causing an annular band to adhere to a contain by heat shrinkage is supported by the support plate as doing such would achieve the benefits discussed above.

As to claim 2, the modified means for heat shrinking comprises a system for delivering hot fluid (column 3, lines 31-34). As to claim 6, Amberg discloses the vertically movable support plate comprises a unit 66 (figure 11) capable of keeping an annual band vertical. As to claim 3, Marchesini discloses steam (column 3, lines 31-33).

As to claim 11, Amberg discloses an apparatus capable of labeling at least one container having a rim or collar, said apparatus comprising: a support positioned above said at least one container and configured to support and transport said at least one container in a suspended erect position; a mounting device configured to mount a vertically disposed heat-shrinkable annular band onto said at least one container from below; a heater for adhering said heat-shrinkable annular band to said at least one container by heat-shrinkage; and at least one vertically movable support plate that

supports the mounting device (figures 10, 11, 14-16, discussion of said figures; column 6, line 54 – column 7, line 60).

It is not clear if Amberg discloses an apparatus wherein the support plate supports a heater for adhering a heat shrinkable band to a container. Marchesini discloses an apparatus as discussed above. At the time the invention was made it would have been obvious to one of ordinary skill in the art to further modify Amberg as modified by Marchesini such that the heater for causing an annular band to adhere to a container by heat shrinkage is supported by the support plate as doing such would achieve the benefits discussed above.

As to claim 12, the vertically movable support plate 70 of Amberg is configured to vertically transport said heat-shrinkable annular band onto said at least one container. As to claim 13-16, the combination of Amberg in view of Marchesini renders the limitations of said claims obvious for reasons presette din the discussion of claims 2, 3, 5 and 6 above.

5. Claims 7-9 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amberg and Marchesini as applied to claim 1 above, and further in view of Konstantin (US 4514966) and Lerner et al. (US 5483783).

It is not clear if Amberg discloses a device wherein the unit for maintaining a band vertical comprises four vertical rods branching from a second plate connected to the vertically moveable support plate via at least one cylinder piston unit. Konstantin discloses a plant and device for labeling a container, said plant capable of placing a

performed band around a bottle (figure 1), comprising a unit for maintaining a band vertical, wherein said unit comprises four vertical rods 1, 1' 2, 2'. At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify the apparatus of Ashcroft or Amberg such that the unit for maintaining a band vertical comprises four vertical rods as taught by Konstantin above as doing such enables the apparatus to place bands around bottles of different circumferences. Lerner discloses a plant for placing a band on a bottle comprising a movable plate (turret) and further discloses and unit for maintaining a band vertical wherein said unit comprises rods branching from a fixed second plate 152 (figures 12-14, 16 and discussion of said figures) said fixed second plate connected to said fixed plate via a cylinder piston (column 8, lines 42-61). At the time the invention was made it would have been obvious to one of ordinary skill in the art to further modify Ashcroft or Amberg as modified by Konstantin such that the rods are connected to a fixed second plate as taught by Lerner above as doing such enables the apparatus to supply air between a band and bottle via said rods thus reducing friction during the placing of said band on said bottle (column 8, lines 42-61).

As to claims 8, Konstantin discloses rods on a perimeter of an imaginary circumference (figures). The rods are capable of maintaining a band widened. As to claims 9 and 19, Lerner discloses holes 144 (figure 12) in the movable plate. As to the limitations of claim 18 (in addition to the limitations of claim 8, one of ordinary skill in the art would have readily understood the equally space the rods around the perimeter of

the circumference as doing such would provide support to the band at equally spaced locations along the circumference.

Response to Arguments

6. Applicant's arguments filed 05/12/2010 have been fully considered.

Applicant's arguments directed toward Ashcroft are moot. Applicant arguments toward Miller are not germane.

Applicant's arguments directed at Amberg are moot in light of the new grounds of rejection presented above. The examiner is not asserting the turret 67 of Amberg reads on the vertically movable support plate. Rather, it is the plate 70 that reads on the vertically movable support plate. Applicant's arguments directed at Marchesini, Korstantin and Lerner are moot in light of the new grounds of rejection presented above.

The applicant states that "in the event that the examiner cites a new piece of prior art in the next Office Action to correct the apparent typographical error, then the Action should be non-final, because the new citation would constitute a new ground of rejection that was not necessitated by Applicant's amendment, and the apparent error was not on the part of the Applicant". First, it should be noted that the applicant has amended the claims and thus necessitated a new grounds of rejection by the examiner. Note that the examiner is relying on portions of Amberg not previously discussed in the Non-Final rejection dated 10/02/2010. For example, the applicant has amended the claims to require that the support plate be vertically movable. This has prompted the withdrawal of the Ashcroft reference, and reliance by the examiner on support plate 70

of Amberg to meet the applicant's amended limitation. Thus, the reference to Amberg has been necessitated by the applicant's amendments.

However, in the event the applicant asserts that the examiner's citation of Amberg is not necessitated by the applicant's amendments, the applicant should note that the examiner is not citing a new piece of art in this final rejection. The correct patent number (US 3767496) for Amberg was cited in paragraph 9 of the Office Action dated 10/02/2010. The applicant acknowledged such on the top of page 16 of the Remarks (discussion of examiner's rejection of claim 5). Amberg is clearly directed to an apparatus for heat shrinking a band around a container. Miller is not directed to an apparatus for heat shrinking a band around a container. Furthermore, the examiner referred to specific portions of Amberg (for example heat shrinking means 77). It should be noted that Miller does not disclose a character 77 in the drawings. The applicant is referred to MPEP 706.07 – "the applicant who dallies in the prosecution of his or her application, resorting to technical or other obvious subterfuges in order to keep the application pending before the primary examiner, can no longer find a refuge in the rules to ward off a final rejection."

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER SCHATZ whose telephone number is (571)272-6038. The examiner can normally be reached on Monday through Friday 9 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER SCHATZ/
Examiner, Art Unit 1791

/Richard Crispino/
Supervisory Patent Examiner, Art Unit 1791